



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT BUNGOMA**

**INSOLVENCY CAUSE NO. 6 OF 2019**

**AGGREY MUSE ASATSA.....PETITIONER**

**VERSUS**

**DENNIS AUGUSTINE MAKOKHA.....RESPONDENT**

**RULING**

By a petition dated 4/12/2-19, the petitioner seeks an order of bankruptcy be made in respect of his estate and he be adjudged bankrupt on the grounds that the respondent obtained judgement in Bungoma chief Magistrates Court Civil Suit No. 846 of 2011 which was concluded in 2019 and is therefore required to pay to the respondent the sum of Kshs 6, 091, 920/=.

He depones that the business he had operated from 2008 collapsed in the year 2012 and therefore as matters stand now, he has no meaningful source of income and is unable to settle the decree.

The respondent filed a replying affidavit in opposition deponing that the petitioner filed a stay application soon after the delivery of judgement in the civil suit whereupon he was granted conditional stay pending appeal. The petitioner did not comply with the conditions and opted to file another application before the subordinate court which was also dismissed.

He depones that upon delivery of judgment the petitioner filed another suit against the insurer to have the insurer compelled to settle the decretal sum. The suit is still pending.

In sum total, he depones that the petitioner is abusing the court process and that the petition offends of Section 32 of the Insolvency Act.

Directions were given for the petition to be disposed by way of written submissions. Both parties complied.

The petitioner submits that the multiplicity of applications preferred by the petitioner are indicative of a party in need of help as he could not even afford to deposit security.

That the statement of affairs and the affidavit evidence by the petitioner have not been challenged. Counsel cites the provisions of section 32 of the Insolvency Act as well as the case of *in the matter of Stephen Nyaega Mose(2018) eKLR* in support of his submissions.

The respondent on his part submits that the petition as presented offends Section 32 of the Insolvency Act as the petitioner has not given an account of his list of creditors and debtors, list of debts and other liabilities and assets.

For his submissions, counsel cites the case of *In re Shadrack Kipyatich J. Kibor (2019)eKLR*.

Section 32 of the Insolvency Act, 2015 provides the pre-requisites that a petitioner must satisfy in an insolvency petition. The Section provides;

***(1) A debtor may make an application to the Court for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor's debts.***

***(2) The Court may decline to deal with such an application if it is not accompanied by a statement of the debtor's financial position containing—***

***(a) such particulars of the debtor's creditors and of the debtor's debts and other liabilities and assets as may be prescribed by the insolvency regulations; and***

*(b) such other information as may be so prescribed.*

*(3) The Court may reject a statement of the debtor's financial position if of the opinion that it is incorrect or incomplete.*

*(4) A debtor who makes an application under this section shall publish a notice of the application in—*

*(a) a newspaper circulating within the region in which the debtor ordinarily resides; and*

*(b) in such other publications (if any) as may prescribed by the insolvency regulations for purposes of this section.*

*(5) The Court may decline to hear the application if subsection (4) has not been complied with to its satisfaction.*

Regulation 18 of the Insolvency Regulations 2016 enumerates particulars that must be provided by the petitioner in the gazette publication. More so, Regulation 18(3) and (4) require the notice to be published in the Kenya Gazette. None has been shown in these proceedings. Material particulars are therefore missing.

The fate of failing to comply with the Insolvency Act and the Regulations therein was dealt with by Ngugi J. in *In re James Maina Kabatha (Debtor/Applicant) [2020] eKLR* where the learned judge held;

*In addition, as per Regulation 18(4), in addition to publication of a notice in a newspaper of regional publication as required under section 32(4) of the Insolvency Act, the debtor is also required to arrange for publication of his Statement of Financial Position in the Kenya Gazette. This has not happened here.*

In the circumstances of the case, I find that the petitioner has not fully complied with the provisions of the law thus rendering the petition untenable.

This court directs the petitioner to regularize the petition in order to comply with the law and move the court appropriately within 45 days from the date hereof. In default, the matter shall stand dismissed. There shall be no order as to costs.

**DATED AT BUNGOMA THIS 26TH DAY OF OCTOBER, 2021**

**S. N RIECHI**

**JUDGE**